आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी'', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member &Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1831/Kol/2024
Assessment Year: 2020-21

Surendra Kumar Goenka (PAN: ADVPG 5243 Q)	Vs.	ADIT, CPC, Bengaluru/ ITO, Ward-61(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	20.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	05.12.2024
For the assessee / निर्धारिती की ओर से	Shri Ajit Kr. Jain, A. R
For the revenue / राजस्व की ओर से	Smt. Ruchika Sharma, Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)"] dated 02.07.2024 for the AY 2020-21.

2. Brief facts of the case of the assessee is that the assessee being an individual filed its return of income u/s 139 of the act for AY 2020-21 declaring total income of Rs. Nil. The aforesaid return was processed by CPC and made adjustment u/s 143(1)

disallowing the claim of exemption under Article 23(4) and raised additional demand of Rs. 28,16,120/-.

3. The said order has been challenged before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed by observing that the assessee filed Form No. 67 on 12.7.2018 which is beyond the time allowed in terms of Rule 128(9) of the IT Rules.

Being aggrieved and dissatisfied, the present appeal has been preferred by the assessee before us.

4. The Ld. Counsel for the assessee challenges the impugned order of AO confirmed by the Ld. CIT(A) by stating that the Ld. CIT(A) has erred in not granting credit of foreign taxation paid and should have been duly allowed under Article 23 of the India-Netherland Double Taxation Avoidance Agreement (DTAA) read with Section 90 of the Act. He has also challenged the levying of additional interest u/s 234A, 234B and 234C of the act.

5. Contrary to that, the Ld. D.R supports the impugned order.

6. Upon hearing the rival submissions, we have perused the record and find that the following facts:

i) The assessee was on assignment to Netherland during FY 2019-20 from 01.04.2019 to 31.01.2020 and had received salary in Netherlands form Tata Steel Netherland Services B. V. (Tata Steel Netherlands) during the said period.

ii) The assessee had received salary income in India from Tata Steel Limited (Tata Steel India) during FY 2019-20.

iii) The assessee to be a ROR in India for the FY under consideration, his global income falls within the scope of taxable income as per Section 5 of the Act. Accordingly, the salary income received from Tata Steel India and Tata Steel Netherlands in respect of services rendered in India and Netherland for AY 2019-20 has been offered to tax in the revised India tax return filed for the said FY.

iv) The assessee had rendered services in Netherlands during the period 1st April, 2019 to 31st January, 2020 and taxes have been paid in Netherlands for the salary income earned and received during said period. Hence, to avoid double taxation , a foreign tax credit amounting to INR 20,64,365/- had been claimed as per Article 23 of the India Netherlands Double Taxation Avoidance Agreement (DTAA) (attached at page 75 to 92) in the revised India Tax return filed for AY 2019-20.

v) A statement in Form no. 67 along with supporting documents have been filed on 22nd February, 2021 for above stated foreign tax credit (attached at page no. 93 to 115) before filing revised tax return on 23rd February, 2021.

vi) The assessee has a copy of his Employment letter in relation to his Netherlands assignment period and passport for his Indian residency (at page no. 116 to 125) for ready reference.

7. We have gone through the order of Ld. CIT(A) and find that the appeal of the assessee has been dismissed by observing thus:

> *"It is observed that the appellant had filed his original income tax return on 31.07.2017 u/s 139(1) of the Income Tax Act, 1961 for the Assessment Year 2017-18. Further, it is observed that the appellant filed Form No. 67 (statement of income from a country or specified territory outside India and Foreign Tax Credit) vide Acknowledgement Number – 762745760120718 on 12.07.2018 which is beyond the time allowed in terms of Rule 128(9) of the IT Rules. So, the appellant has not confirmed to the conditions laid down by the provisions of Rule 128(8) and 128(9) of the IT Rules in order to be eligible to get foreign tax credit."*

8. We find that the assessee has filed its original income tax return on 31.07.2017 u/s 139(1) of the act and Form no. 67 has been filed on 12.07.2018. The Ld. CIT(A) has dismissed the case of the assessee only on this ground that there was a delay in filing of form no. 67. We have perused the decision of Co-ordinate bench of Kolkata in the case of Anindya Sarka vs. ACIT, CPC in ITA No. 1345/Kol/2024 for AY 2020-21 dated 26.07.2024. The operative part is reproduced as under:

> *"7. The Ld. DR supported the order of the Ld. CIT(A). We have gone through the rival contention and also examined the facts. It was submitted before the Ld. CIT(A) by the assessee that the rerun of income was filed on 25.12.2020 and on 26.12.2020 he had submitted the Form No. 67 after receiving the communication from the e-filing team, Income Tax Department on 25.12.2020 that the return of income was not accompanied by Form No. 67 as mandated by*

law. Subsequently, since the credit was not allowed, he filed rectification application and Form No. 67 on 03.07.2022 and prior to that rectification requests on 21.05.2022 and on 07.06.2022 were also filed. The credit was not allowed since From No. 67 was filed beyond the date for filing the return of income under Section 139(1) of the Act. In the case of Mahua Bagchi Vs. ACIT (supra) relied upon by the assessee, it is held as under:

> *"5. After hearing rival contentions and perusing the material on record, we find that the assessee served abroad and some foreign tax to the tune of Rs. 17,72,470/- was deducted in United Kingdom under DTAA between India and UK and provision of Section 90(2) of the Act. We also note that Rule 128 sub-Rule 9 provides that Form-67 should be filed on or before the due date of filing the return of income. However, we note that nowhere it is stated that in case of delayed filing of Form-67 by way of foreign tax credit which is deducted from the assessee in foreign country i.e U.K. would be denied. Accordingly, we are of the considered view that the assessee is entitled to get this foreign tax credit of Rs. 17,72,470/- u/s 90 of the Act. We also note that the claim in respect of foreign tax was allowed in the order passed u/s 143(1) of the dated 28.03.2019 and was withdrawn by the AO by passing order u/s 154 of the Act when the assessee filed form 67 before the AO. In our opinion the credit in respect of foreign tax cannot be denied to the assessee for the technicality of not filing the form 67 within the due date of return u/s 139(1) of the Act. The case of the assessee finds support from the decision of Coordinate Benches in the case of Atanu Mukherjee Vs. ITO in ITA No. 439/KOL/2022 for AY 2020-21 order dated 20.12.2022 and Sobhan Lal Gangopadhyay Vs. ADIT in ITA No. 782/KOL/2022 for AY 2020-21 order dated 09.05.2023.*
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> *6. In the result, the appeal filed by the assessee is allowed."*

8. Further, in the case of Deepak Shimoga Padmaraju Vs. Assistant Director of Income Tax (supra), relying upon the case of Brinda Rama Krishna in ITA No. 454/Bang/2021 for AY 2018-19, order dated 17.11.2021 it has been held that Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67. The relevant extract of the aforesaid order read as under:

> *"(ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. Therefore, non-furnishing of Form No.67 before the due date u/s 139(1) of the Act is not fatal to the claim for FTC. The findings of this Tribunal are reproduced below: "*
>
> *2. The Assessee is an individual and during the previous year relevant to AY 2018- 19 an ordinary resident in India. The Assessee worked with Ernst & Young Australia from 20.11.2017 till 16.05.2019. Since her global income was taxable in India, the Assessee offered to tax salary income earned for services rendered in Australia for the period from December 2017 to March 2018 to tax in India. The Assessee claimed foreign tax credit ("FTC") for taxes paid in Australia.*
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> *3. There is no dispute that the Assessee is entitled to claim FTC. Rule 128 of the Income Tax Rules, 1962 (Rules) provides for giving FTC and reads thus: "Foreign Tax Credit. 128. (1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule: Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is*

offered to tax or assessed to tax in India." One of the requirements of Rule 128 for claiming FTC is provided by Rule 128 (8) & (9) of the Rules and the same reads thus: "(8) Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee, namely:—

(i) a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein; (ii) certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee,— (a) from the tax authority of the country or the specified territory outside India; or (b) from the person responsible for deduction of such tax; or (c) signed by the assessee: Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by,—

(A) an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;

(B) proof of deduction where the tax has been deducted. (9) The statement in Form No.67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under subsection (1) of section 139, in the manner specified for furnishing such return of income."

4. The Assessee claimed FTC of Rs. 4,73,779/- u/s. 90 of the Act read with Article 24 of India Australia tax treaty ("DTAA") in a revised return of income filed on 31.8.2018. The Assessee had not filed the Form 67 before filing the return of income. On realising the same, the Assessee filed Form 67 in support of claim of foreign tax credit on 18.04.2020. The revised return of income was processed by Centralized Processing Centre (CPC) electronically and intimation u/s 143(1) of the Act on 28.05.2020 was passed disallowing the claim of FTC.

5. The Assessee filed a rectification application before the AO on 15.06.2020 & 25.02.2021 and submitted that credit for FTC as claimed in the return should be given. In the rectification order dated 10.03.2021, the AO upheld the action on the ground that the Assessee has failed to furnish Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) of the Rules.

6. On appeal by the Assessee, the CIT(A) vide Order dated 03.09.2021 confirmed the Order of AO. The CIT(A) held that the Assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, and therefore Form 67 is nonest in law. The CIT(A) also held that provisions of Rule 128 are mandatory in nature. The CIT(A)rejected the contention of the Assessee that filing of Form 67 is a procedural requirement and noncompliance thereof does not disentitle the Assessee of the FTC.

16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of

reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard."

9. Further, similar issue arose in the case of Sukhdev Sen Vs. ACIT, Circle -1, Kolkata (ITA No. 78/Kol/2014, dated 26.03.2024). The relevant extract of the aforesaid order is as under:

"7. Before proceeding further, we would like to reproduce rule 128 of the Income-tax Rules, 1962 (the Rules) which relates with foreign tax credit as under:

"Foreign Tax Credit. 128 (1) An assessee, being a resident shall be allowed credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such lax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule:

Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India"

8. We further note that section 90 of the Act provides that Government of India can enter into Agreement with other countries for granting relief in respect of income on which taxes are paid in country outside India and such income is also taxable in India. Article 25 of DTAA between India and USA provides for credit for foreign taxes. Article 25(2)(a) is relevant in the present context. Same is extracted below:

"Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States"

9. Thus, Section 90 of the Act read with Article 25(2)(a) of the DTAA provides that tax paid in USA shall be allowed as a credit against the tax payable in India but limited to the proportion of Indian tax Neither section 90 nor the DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirement. Foreign Tax Credit is an assesser's vested right as per Article 25[2](a) of the DNA road wat Section 90 and same cannot be disallowed for non-compliance with procedural requirement that is prescribed in the rules.

10. Further, we would like to mention that rule 128(9) provides that Form No. 67 should be filed on or before the due date of filing the return of income as prescribed u/s 139(1) of the Act. However, the rule nowhere provides that if the said Form No. 67 is not filed within the required time frame, the relief as sought by the assessee u/s 90 of the Act would be denied. It is therefore evident that if the intention of the legislature were to deny the foreign tax credit, either the Act or the rules would have specifically provided that the foreign tax credit would be disallowed if the assessee does not file Form No. 67 within the due date prescribed under section 139(1) of the Act. We further note that Filing of Form No. 67 is a procedural/directory requirement and is not a mandatory requirement and violation of procedural norm does not

extinguish the substantive right of claiming the credit of FTC. In support of the claim, the assessee has relied upon several decisions including the following decision:

i. . CIT vs. G.M. Knitting Industries (P) Ltd. 71 Taxmann.com 35(SC)

ii) Brinda Ramakrishna vs. IPO 193 ITD 840 (Bang)

iii) 42 Hertz Software India Pvt. Ltd vs Asst. CIT. Ita No. 29. Hang/2001

iv) Duraiswamy Kumaraswamy vs. PCIT, W.P No.5834 of 2022

11. Hon'ble Supreme Court, in the case of Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, [1992 Supp (1) Supreme Court Cases 21) in respect of compliance with the procedural requirements have observed that:

> *"The mere fact that it is statutory does not matter one way of that other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the nonobservance of all conditions irrespective of the purposes they were intended to serve."*

12. Further, in the case of Engineering Analysis Centre of Excellence Private Limited vs the Commissioner of Income-tax & Anr. Civil Appeal Nos. 8733-8734 of 2018 & Ors. Hon'ble Supreme Court have held as under that the provisions of DIAA shall override the provisions of the Income-tax Act unless they are more beneficial to the assessee:

> *165. The conclusions in the aforestated paragraph have no direct relevance to the facts at hand as the effect of section 902) of the Income Tax Act wat explanation 4 thereof, is to treat the DTAA provisions as the low that must be followed by Indian courts, notwithstanding what may be contained in the Income Tax Act to the contrary, unless more beneficial to the assessee.*

13. We have gone through the decisions of the coordinate Benches and concur with their findings in this regard that filing of Form No. 67 is directory and not mandatory and the credit for foreign taxes paid cannot be denied merely on the delay in filing the Form No. 67. In the case of M/s 42 Hertz Software India Pvt Ltd. Vs the Assistant Commissioner of Income Tax, Circle 3 (1)(1), Bangalore, ITA No. 29/Bang/2021 ITAT. BANGALORE it is held that:

> *6. There is no dispute that the Assessee is entitled to claim FTU On perusal of provisions of Rule 128 (8) & (9), it is clear that, one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns. In our view, this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No 67 This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms. Brindu Kumar Krishna us. ITO in ITA no. 454/ Bang/2021 by order dated 17/11/2021.*
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> *7. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various High Courts, which has also been approved by Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence (P) Ltd reported im (2021) 432 ITR 471.*

8. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

14. In Vikash Daga Vs ACIT Circle-3 (1) Gurgaon ITA No.2536/Del/2022, the ITAT DELHI BENCH 'H', NEW DELHI vide order dated 14/06/2023 have held that:

8 We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee holds a foreign tax credit certificate for Rs. 1887114/- In our considered opinion filing of form 67 is a procedural / directory requirement and is not a mandatory requirement Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC We accordingly direct the AO to allow the credit of FTC and hold that rule 128(9) of the Rules 3 does not provide for disallowance FTC in case of delay filing of form 67 is not mandatory het directory requirement and DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. 9. In the result, the appeal filed by the assessee is allowed.

15. Similarly, in the case of Ashish Agrawal Vs. Income Tax Officer, Ward-12(1), Hyderabad ITA No. 337/Hyd/2023 ITAT HYDERABAD BENCHES "B", have held vide order dated 26/09/2023 that:

11. As far as the issue of FTC is concerned, learned AR placed reliance on the decision in the case of Ms. Brinda Rama Krishna (supra) in the case of Ms Brinda Rama Krishna (supra), the Bench considered the issue in the light of the provisions of 10 ITA No. 1345/Kol/2024 Anindya Sarkar : AY: 2020-21 DTAA, section 295(1) of the Act, the decisions of the Hon'ble Apex Court in the case of Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner (1992 Supp (1) SCC 21), Sambhaji Vs. Gangabai (2008) 17 SCC 117 and a lot many decisions of the Hon'ble Apex Court including the case m Union of India Vs. Azadi Bachao Andolan (2003) 263 ITR 706 (SC) etc. and reached a conclusion that since Rule 128(9) of the Rules does not provide for disallowance of FTC in the case of delay in filing Form 67 and such filing within the time allowed for filing the return of income under section 139(1) of the Act is only directory, since DTAA over rides the Act, and the Rules cannot be contrary to the Act.

12. We find from Article 25(2)(a) of the DTAA that where a resident of India derives income which, in accordance with the provision of the convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of the resident an amount equal to the income tax paid in the United States, whether directly or by deduction in view of this provision over riding the provisions of the Act, according to us, Rule 128(9) of the Rules has to be read down in conformity thereof Rule 128(9) of the Rules cannot be read in isolation. Rules must be read in the context of the Act and the DTAA impacting the rights, liabilities and disabilities of the parties. 13. In the case of Purushothama Reddy Vankireddy (supra) also the Co-ordinate Bench of the Tribunal, in the similar circumstances, allowed the appeal of assessee for FTC claim. Respectfully following the same, we are of the considered Page 6 of 8 ITA No. 337/Hyd/2023 opinion that the decisions relied upon by the assessee are applicable to the facts of the case and the grounds raised by the assessee are accordingly allowed.

14. In the result, appeal of the assessee is allowed."

16. We have also gone through the decision of the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy us. PCIT (supra) and found that the facts are identical to the facts of the case of the assessee and the decision is squarely applicable to the facts of the case of the assessee. In that case, the petitioner was resident of India and had filed Indian ITR and claimed benefit of FTC u/s 90/91 of the Act row. Article 24 of the India-Kenya DTAA. During the year, he had income of both Kenya and India but while filing the Indian ITR for the impugned assessment year 2019-20, the Form No. 67 prescribed in rule 128 of the rules for claiming FTC was inadvertently not uploaded along with the ITK which was uploaded on 02.02.2021 The return was processed on 26.03.2021, however, the credit of FTC was not given effect to and the request made to the CPC to give effect to the FTC was not accepted and intimation along with notices of demand was received. The assessee also could not succeed with the rectification application filed and approached the CIT u/s 264 of the Act and at the same time filed a writ petition before the Hon'ble Madras High Court. It was stated by the respondent- department that rule 128 is mandatory and cannot be considered as directory in nature. The petitioner referred to the judgment of the Hon'ble Supreme Court in the case of CIT vs. G.M. Knitting Industries (P) Ltd. Civil Appeal Nos. 10782 of 2013 and 4048 of 2014 dated 24.06.2015 The Hon'ble High Court allowed the Writ Petition in favour of the assessee by holding as under.

> *"11. The law laid down by the Hon'ble Apex Court in Commissioner of Income Tax, Maharashtra v. G.M.Knitting Industries (P) Limited in Civil Appeal Nos. 10782 of 2013 and 4048 of 2014 dated 24.06.2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without FTC, however the same was filed before passing of the final assessment order. The filing of FTC in terms of the Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature This is what the Hon'ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order. W P. No 5834 of 2022.*
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> *12 Further, in the present case, the intimation under Section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the PTC was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore, the impugned order is liable to be set aside.*
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> *13. Accordingly the impugned order dated 25.01.2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the FTC filed by the petitioner on 02.02.2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set wade only to the extent of disallowing of FTC clam made by the petitioner und hence, the first respondent is directed to consider only on the aspect of rejection of FTC clam within a period of 8 weeks from the date of receipt of copy of this order"*

17. Respectfully following the order of the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy vs. PCIT (supra) and concurring with the views held by the coordinate Benches of the Tribunal (supra), we hold that merely because the assessee could not file Form No. 67 within the prescribed time limit as per the provisions of rule 128(9) of the Income-tax rules, 1962, as it stood during the year under consideration, will not preclude the assessee from claiming the benefit of the foreign tax credit in respect of taxes paid outside India. Therefore, the claim of the assessee is allowed and the Assessing Officer is directed to give benefit of foreign tax

credit in respect of tax paid outside India by the assessee in accordance with law and the DTAA between India and the USA. Accordingly, grounds no. 2,3,4 of the appeal are allowed."

9. The relevant extracts of Article 23(4) of the Treaty on Relief From Double Taxation is reproduced below for ready reference:

" In India , double taxation shall be eliminated as follows:

Where a resident of India derives income or owns a capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the Netherlands, whether directly or by deduction, and as a deduction form the tax on the capital of that resident, an amount equal to the capital tax paid in the Netherlands. Such deduction in either case shall not, however, exceed that part of the income tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital by which may be taxed in the Netherlands. Further, where such resident is a company by which sur tax is payable in India, the deduction in respect of income tax paid in the Netherlands shall be allowed in the first instance from income tax payable by the company in India and as to the balance, if any, from sur tax payable by it in India."

10. Keeping in view, the provision of DTAA as well as the judicial precedent in this regard, we find no justification for not allowing the credit for FTC. The order of the Ld. CIT(A) as well as the AO for disallowing the foreign tax credit claimed in revised Indian tax return amounting to Rs. 20,64,365/- is hereby set aside. The assessee is entitled for advance of FTC of Rs. 20,64,365/-. So far the other submission of the record for levying interest is concerned in view of the decision as stated above, the levying additional interest is also hereby set aside.

In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 5th December, 2024

Sd/- Sd/-

(Rajesh Kumar/राजेश कुमार) (Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Accountant Member/लेखा सदस्य Judicial Member/न्यायिक सदस्य

Dated: 5th December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Surendra Kumar Goenka, 22, Aakash Ganga, Krishna kamal Bhattacharya Lane, Howrah-West Bengal-711101
2. Respondent – ITO, ward-61(3), Kolkata
3. Ld. CIT(A)-Addl./ JCIT(A)-1, Nashik
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata